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STAFF DISCUSSION OF POSITIONS

- 1(A)(a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?

Section 271(c)(1)(A) requires BellSouth to have entered into binding interconnection agreements that have been approved by the Florida Commission. BellSouth asserts that as of May 30, 1997 it has entered into 55 local interconnection agreements in Florida which for the most part have been approved by this Commission. (Varner TR 108) It is undisputed by all of the parties in this proceeding that BST has entered into one or more binding agreements approved under Section 252 with unaffiliated providers. (ICI BR p.14; FCCA BR p.32; AT&T BR p.8; MCI BR p.6; TCG BR p.2; MFS BR p.5; FCTA BR p.5; ACSI BR p.6; Sprint BR p.2)

Staff agrees that the record in this proceeding demonstrates that BST has entered into one or more binding agreements in Florida that have been approved under Section 252 with unaffiliated competing providers. As of August 6, 1997, BST had entered into 29 negotiated interconnection agreements in Florida that had been approved by this Commission pursuant to Section 252 of the Act. (EXH 1) In addition, BST has entered into arbitrated interconnection agreements in Florida with MCI, MFS, AT&T, and Sprint that have been approved by this Commission pursuant to Section 252 of the Act. (EXHs 12-15) Furthermore, staff would point out that the MCI and AT&T arbitrated agreements cover the provision of each of the 14 checklist items. (EXH 8, p.2; EXH 13; EXH 14; Gulino TR 3170) However, a complete analysis as to whether BST has "fully implemented" each of the 14 items is covered in Issues 2-15.

While FCTA does not dispute the fact that BST has entered into one or more binding agreements, FCTA contends that Section 271 obligates BellSouth to implement the competitive checklist consistent with FCC rules. Specifically, FCTA argues that to satisfy the requirements of Section 271(c)(2)(B), BST must demonstrate that prices for checklist items are based on cost studies conducted in accordance with FCC standards. (FCTA BR p.7) Staff recognizes that interim rates do exist in some of the agreements that BST has entered into with competing parties in Florida. While staff also agrees that BST must demonstrate that the prices for the checklist items are cost based, staff believes that for purposes of satisfying Track A, FCTA's argument is without merit. As mentioned earlier, staff agrees with the FCC's conclusion that Section 271(c)(1)(A) does not require that each agreement contain permanent cost-based prices or all terms of the competitive checklist to be considered a "binding agreement." (EXH

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1, FCC 97-298, ¶72-73) Therefore, for the reasons above, staff believes that BST has satisfied this portion of Section 271(c)(1)(A).

1A(b) Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?

This portion of Section 271(c)(1)(A) requires BST to provide access and interconnection to unaffiliated competing providers of telephone exchange service. A number of parties in this proceeding argue that there are no "competing providers" in Florida as required by Section 271(c)(1)(A). (ICI BR p.15; FCCA BR p.34; AT&T BR p.10; TCG BR p.2; MFS BR p.6; FCTA BR p.8; ACSI BR p.6; Sprint BR p.2) BST asserts that it is provisioning network elements and network functions to facility based competitors in Florida, thereby satisfying this portion of Section 271(c)(1)(A). (Varner TR 122)

Provision Of Access and Interconnection

BST asserts that eight facility-based ALECs (MediaOne, MCI Metro, MFS, National Tel, ICI, Sprint, TCG and Time Warner) have established local interconnection between their networks and BST's network in Florida as of May 15, 1997. In addition, BST contends that each of these eight facility-based ALECs has also completed requests for BST to provide retail services at a wholesale discount in order to provide services to their business and residential customers on a resold basis. (EXH 21, p.301) BST also contends that it has received and processed requests for interim number portability for numbers which were formerly served by BST as residential customers and has received reports of facility-based ALEC marketing efforts in the multi-family dwelling unit (MDU) sector of the Florida residential market. (EXH 21, p.301) Although BST contends that it does not have the information to determine conclusively if any of these ALECs are actually providing service to residential or business customers, it believes that these carriers have the ability to provide telephone exchange service to residential and business subscribers. (EXH 21, p.301)

BST also contends that it is provisioning network elements and network functions to facilities-based competitors in Florida. Witness Varner asserts that the network elements that are being provided to competing providers in Florida include 7,612 interconnection trunks, 7 switch ports, and 1,085 loops. In addition, witness Varner contends there are 7 physical collocation arrangements in progress, 34 virtual collocation arrangements completed and 24 additional virtual collocation arrangements in progress. BST also asserts that it has 9 license agreements for

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poles, ducts and conduits/rights of way, 277 ALEC trunks terminating to BST directory assistance, 911 and intercept services, 11 verification and inward trunks, and 31 ALEC trunks to BST for operator services. (TR 122-123)

BST also provided a breakdown of the network elements and network functions requested, by entity, in Florida. (EXH 2) While this information is proprietary, the various parties verified the accuracy of the information at hearing. (Kouroupas TR 3515; Strow TR 2469; Closz TR 2608; Ball TR 3411) However, staff would note that the quantity of network elements and network functions provided by BST in Exhibit 2, which was verified by the parties, differs from that provided by BST in witness Varner's testimony.

BST believes there is no question that this portion of the Act is satisfied as to business customers. (BR p.10) BST also asserts that there are currently at least two facilities-based providers that are serving residential customers. (Varner TR 292; BR p.11) BST believes that based on a response provided by FCTA, MediaOne is serving residential customers in two different local markets in Florida. (BR p.11; EXH 87) BST also asserts that TCG is providing facilities-based service to one provider that is, in turn, providing this service to residential subscribers. (BR p.11)

Intervenors' Positions

TCG witness Kouroupas testified that TCG is a facilities-based ALEC that is currently operating in Florida. (EXH 123, p.7) TCG has deployed a network consisting of about 380 route miles of fiber throughout the Southeast Florida LATA, including the installation of a switch in Miami. (EXH 123, p.11) TCG contends that it provides local exchange service to under 500 business customers either entirely over its own facilities or in part through the use of TCG's own facilities and unbundled elements that TCG has purchased from BellSouth. (TR 3514, 3517-3518) While witness Kouroupas asserts that TCG does not have tariffed residential service and does not provide residential service in the traditional sense, witness Kouroupas asserts that TCG sells services to resellers and shared tenant service providers who may, in fact, be providing residential service. (EXH 123, p.11; TR 3503) In fact, witness Kouroupas testified that at least one STS provider is purchasing service from TCG and is, in turn, reselling it to residential subscribers. (TR 3503; EXH 123, p.18) However, staff would note that there is no additional evidence in this proceeding to confirm if one or more residential subscribers are actually being provided service. Witness Kouroupas also testified that TCG is not offering service through the resale of BST's telecommunications service. (TR 3519)

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BST argues that the provision of residential service by an ALEC to subscribers through a downstream reseller satisfies the requirements of Track A. (BR p.11) Staff would agree. Through the use of facilities owned by TCG, it appears that local exchange service is either being provided to residential subscribers or is intended to be provided to residential subscribers. Staff does not believe that the existence of a reseller between TCG and the residential subscriber changes this. Furthermore, staff believes that if the existence of a reseller causes BST to be noncompliant with Section 271(c)(1)(a), then any provider could conceivably serve residential subscribers with its own facilities through the use of a reseller, thereby avoiding a scenario that would ultimately satisfy Track A. Thus, staff believes that the provision of residential service by an ALEC through a downstream reseller may satisfy the requirement of Track A. However, based on the evidence in this proceeding, staff is unable to confirm if one or more residential subscribers are actually being served by a competing provider or if residential subscribers are paying for service. Therefore, while staff agrees that BST is providing access and interconnection to TCG, staff cannot make a determination at this time as to whether or not TCG is a "competing provider" of local service to residential subscribers.

FCTA asserts that BST is providing access and interconnection to MediaOne; however, it is pursuant to an interconnection agreement approved under Section 364.162, Florida Statutes, not pursuant to Section 252 of the Act. (EXH 86, p.4) FCTA also contends that if BST is relying on the MediaOne agreement to satisfy Section 271(c)(1)(a), it does not address all of the 14 checklist items. (BR p.11) Witness Varner testified that the MediaOne agreement has not been implemented as to all 14 checklist items. (TR 293) The current agreement that BST has entered into with MediaOne meets all of the checklist items with the exception of checklist item 3. (EXH 9, p.4) However, as discussed later in this issue, staff does not believe that Section 271(c)(1)(A) requires that each interconnection agreement contain all elements of the competitive checklist to be a binding agreement. Staff believes that a combination of interconnection agreements can be used to satisfy the requirements of Track A. Thus, staff believes that FCTA's argument on this point is without merit.

FCTA asserts that MediaOne is currently providing residential service over its own facilities to fewer than 35 subscribers in the city of Plantation, Florida. These residential subscribers have not to date been assessed a fee for their local telephone exchange service. (EXH 87, p.1) FCTA contends that MediaOne is also currently providing business service to fewer than 10 subscribers with fewer than 2,000 subscriber lines as of July, 1997. (EXH 87,

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p.2) FCTA asserts that these business subscribers are all assessed a fee for their local telephone exchange service. The total billings for each month May-June, 1997 were less than \$90,000 a month for local business telephone exchange service. (EXH 87, p.3)

Staff believes that there are several problems with BST relying on MediaOne to fulfill the requirement of Section 271(c)(1)(A) regarding the provision of access and interconnection to residential and business subscribers. Based on the evidence in this proceeding, staff is unable to determine whether MediaOne's residential offering is a test or whether MediaOne intends to expand its service offering to additional residential subscribers. While BST asserts it believes that MediaOne's offering involves customers who are actually getting service, witness Varner testified that he has no personal knowledge whether MediaOne has billing systems in place to charge for local exchange service. (EXH 5, p.120; TR 125) Finally, MediaOne's agreement with BST was negotiated pursuant to state law, rather than Section 252 of the Act. Thus, there is no Commission order approving it pursuant to Section 252. Therefore, staff does not believe that this agreement is a binding agreement which BST may rely on in order to satisfy Section 271(c)(1)(A).

ICI asserts that BST cannot satisfy Track A because it has not demonstrated that operational facilities-based competing providers of telephone exchange now serve residential and business customers in Florida beyond a *de minimis* level. (BR p.5) While ICI asserts that it is currently providing local exchange service to business customers in Florida, either exclusively over its own facilities or in combination with UNEs purchased from BST, witness Strow testified that ICI is only serving residential customers through resale. (TR 2471-2475) Witness Strow testified that ICI provides telephone exchange service in the major metropolitan areas in Florida, including Miami, Fort Lauderdale, West Palm Beach, Tampa, St. Petersburg, Clearwater, Jacksonville, and the Orlando area. ICI currently has its own switches in Miami, Clearwater, Jacksonville, and Orlando. (EXH 79, pp.20-21)

Sprint also asserts that it is currently providing local exchange service to business customers in Florida, either exclusively over its own facilities or in combination with UNEs purchased from BST. (Closz TR 2607) Sprint is a facilities-based ALEC with its own central office switch and a limited fiber optic backbone network. Witness Closz testified that Sprint is focused primarily on serving business customers in the metropolitan Orlando area. (TR 2576) While Sprint does not currently serve residential customers through its own facilities or resale, witness Closz testified that Sprint has plans to serve residential customers in

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the future. However, witness Closz was unable to provide a time frame for when that would occur. (EXH 89, p.49)

While ACSI, LCI, and MFS have requested UNEs from BST, they are not currently providing local exchange service to business or residential customers in Florida exclusively over their own facilities or in combination with UNEs purchased from BST. (Falvey TR 2317; EXH 84, pp.8-9; EXH 116, p.67; Ball TR 3412) However, witness Falvey and witness Kinkoph testified that ACSI and LCI, respectively, are providing service to business customers through resale. (TR 2321; EXH 84, p.9)

MCI asserts that it has an interconnection agreement with BST under which BST is providing some interconnection. (BR p.7) However, MCI contends that BST is not providing access and interconnection in compliance with its agreement or with the Act. (BR p.7) MCI is a facilities-based ALEC with local switches located in Miami, Orlando, Tampa, and Ft. Lauderdale. (Gulino TR 3166) MCI asserts that it is currently serving a number of business customers either exclusively over its own facilities or in combination with UNEs purchased from BST. (Martinez TR 3331) MCI is currently not serving any residential customers either exclusively or predominantly over its own telephone exchange service facilities in Florida. MCI ordered an unbundled network element combination to provide residential service to a MCI employee on a test basis in Jacksonville; however, MCI has not charged a fee for this service since it is a test. (EXH 112) MCI also asserts it is conducting a residential resale test in Florida utilizing approximately 60 of its employees, and a business resale test utilizing a few of its own business offices. (BR p.9)

AT&T asserts that it is clear from the record that BST is providing some form of access and interconnection to some carriers. (BR p.9) AT&T contends that it is not currently providing local exchange service to business or residential customers in Florida exclusively over its own facilities or in combination with UNEs purchased from BST. (EXH 95, pp.29-30) However, AT&T has ordered UNEs from BST and is in the process of performing a concept test on the provision of local exchange service utilizing four AT&T employees. (Hammon TR 2775-2776) FCCA also asserts that while BST is providing some level of interconnection, it is primarily on a small test basis with many problems; thus, it does not meet the Act's requirements. (BR p.32) AT&T recognized that the FCC's analysis in the Ameritech Order focused more on the nature and level of competition rather than the quality of interconnection. However, AT&T still maintains that BST is not "providing access and interconnection to its network facilities from the network facilities of such competing providers" in Florida because the

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nature and level of competition is insufficient. (BR p.9) AT&T asserts that because BST did not specify the interconnection agreements which it relies upon to meet the requirements in Section 271(c)(1)(a), it is difficult to analyze this case similar to that conducted by the FCC in the Ameritech case. (BR p.9)

"Fully Implemented" Checklist

For the most part, the competitors argue that Section 271(c)(1)(A) provides that BST's entry into the interLATA market may not occur absent the presence of at least one or more interconnection agreements with a facilities-based local competitor that implements the Act's competitive checklist. (FCTA BR p.11, MCI BR p.5; AT&T BR p.2; ICI BR p.5) MCI also asserts that Section 271(c)(1)(A) requires the BOC to "provide" and "fully implement" each of the fourteen checklist items. (BR p.5) MCI further asserts that Section 271(c)(2) requires a BOC proceeding under Track A to actually be "providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A)." FCTA and MCI cite to Section 271(d)(3)(A)(I), which requires full implementation of the competitive checklist, and contend that the Act precludes BST from entering the interLATA market under Track A unless it has "fully implemented" all the items in the competitive checklist. FCTA and MCI assert that while the burden of proof on all factual issues lies with BST, BST has failed to demonstrate that all items in the competitive checklist are fully implemented in accordance with the Act's requirements. (FCTA BR p.11; MCI BR p.5)

MFS, ICI and ACSI assert that BST is not providing access and interconnection as it is required by the Act due to BST's failure to fulfill each of the checklist items separately addressed in Issues 2-15. (MFS BR p.6; ACSI BR p.6; ICI BR p.5) In addition, ICI asserts that while BST is providing some level of access and interconnection, it is not providing unbundled network elements, interconnection, and nondiscriminatory access to operations and support systems, in the manner contemplated by the 1996 act. (BR p.15) MCI contends that BST's reliance on the SGAT is an admission that it has not fully implemented all of the checklist items in its interconnection agreements. (BR p.6)

While BST argues that it is providing access and interconnection to network facilities for competing providers, BST asserts that its SGAT provides an additional vehicle to provide those items of the checklist that have not been requested by competing providers. (Varner TR 123) BST contends that subsequent to approval of its SGAT, it will have generally offered every item on the 14 point competitive checklist. (Varner TR 123) Furthermore, BST's witness Scheye testified that offerings that address each of

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the 14 checklist items have not only been made to its competitors, they have actually been ordered. (EXH 20) Moreover, BST asserts that no party provided testimony to contradict this fact. (BR p.9) BST contends that the parties appear to argue more that the interconnection and access is not adequate to meet the requirements of the checklist, then that access and interconnection are not provided at all. (BR p.9)

BST argues that its proposed SGAT provides each of the functions, capabilities, and services that the Act requires in order for all ALECs to enter the local exchange market. BST contends that the features, functions and services in its proposed SGAT are identical to the items in the 14 point checklist contained in Section 271 of the Act. Thus, BST believes that if the SGAT satisfies Sections 251 and 252(d), then it also meets the competitive checklist in 271(c)(2)(B).

BST further argues that in those instances where a competitive checklist item has not been requested, its SGAT is necessary to supplement Track A since it would demonstrate that the items were being made available in a concrete, legally binding manner. However, staff does not believe that an SGAT is necessary in this proceeding since BST has entered into arbitrated agreements that have been approved by this Commission pursuant to Section 252 that include provisions for each of the 14 competitive checklist items. (EXH 8, p.2; EXH 13; EXH 14; Gulino TR 3170) Staff believes that these interconnection agreements are concrete and legally binding to satisfy a Track A finding. Therefore, staff does not believe that an SGAT is required to make a Track A determination.

Additionally, according to the FCC, Section 271(c)(1) and the competitive checklist in Section 271(c)(2)(B) establish independent requirements that must be satisfied by a BOC. (EXH 1, FCC 97-228, ¶59) Thus, the fact that BST has received a request for access and interconnection that, if implemented, will satisfy Section 271(c)(1)(A), does not mean that the interconnection agreement, when implemented, will necessarily satisfy the competitive checklist. (EXH 1, FCC 97-228, ¶59) In addition, the FCC concluded that there is nothing in Section 271(c)(1)(A) or Section 271(c)(1)(B) that suggests that a qualifying request for access and interconnection must be one that contains all fourteen items in the checklist. (EXH 1, FCC 97-228, ¶59) Staff agrees with the FCC's interpretation. Thus, if each interconnection agreement entered into by BST fails to satisfy all of the 14 checklist items, staff does not believe that BST automatically fails to satisfy Section 271(c)(1)(A) or Section 271(c)(1)(B).

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Furthermore, in the Ameritech order, the FCC found that Section 271(c)(1)(A) does not require that each interconnection agreement contain all elements of the competitive checklist to be a binding agreement. (EXH 1, FCC 97-298, ¶73) Also, the FCC stated that it did not believe that competing LECs and IXC's would necessarily purchase each checklist item in every state. (EXH 1, FCC 97-298, ¶111) Competitors may need different checklist items, depending upon their market strategies. Moreover, the FCC states that it believes that the interpretation of the IXC's in the Ameritech case of Section 271(d)(3)(A)(I) is inconsistent with the statutory scheme since it could potentially create an incentive for competitive carriers to refrain from purchasing network elements in order to delay BOC entry into the in-region, interLATA services market. (EXH 1, FCC 97-298, ¶111)

Staff agrees with the FCC's interpretation regarding the implementation of the competitive checklist as it relates to a "binding agreement." In addition, staff believes that the idea that BST fails to satisfy Track A unless it has "fully implemented" all the items in the competitive checklist, is quite contrary to the FCC's decision in the Ameritech order, and consequently the intent of the Act. Staff would point out that the FCC concluded that Ameritech satisfied Section 271(c)(1)(a); however, the FCC found that Ameritech failed on several of the checklist items in Section 271(c)(2)(B), including OSS, access to 911 and E911, and interconnection. Citing Section 271(d)(3)(A)(I), the FCC concluded that because Ameritech satisfied Section 271(c)(1)(a), "we must next determine whether Ameritech has fully implemented the competitive checklist in subsection (c)(2)(B)." (EXH 1, FCC 97-298, ¶105) Staff maintains that Section 271(c)(1)(A) and Section 271(c)(2)(B) are distinct; thus, a BOC could potentially satisfy Track A without fully implementing the competitive checklist in subsection (c)(2)(B).

"Competing Provider"

Based on the testimony in this proceeding, staff believes that there are ALECs that are operational in Florida. Staff believes that these ALECs are providing a commercial alternative to local exchange business subscribers, thereby satisfying the phrase "competing provider" as contemplated by the Act, and subsequently defined by the FCC in the Ameritech order. According to the FCC, the term "competing provider" in Section 271(c)(1)(A) suggests that there must be an actual commercial alternative to the BOC. (EXH 1, FCC 97-298, ¶75) The FCC pointed out that this interpretation is consistent with the Joint conference Committee's Report which stated that "[t]he committee expects the Commission to determine that a competitive alternative is operational and offering a

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competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance." (EXH 1, FCC 97-298, ¶76) While the FCC determined that at a minimum, a carrier must actually be in the market and operational (i.e., accepting requests for service and providing such service for a fee), it did not address whether a new entrant must meet additional criteria to be considered a "competing provider" under Track A. (EXH 1, FCC 97-298, ¶75) Staff agrees that an actual commercial alternative to the BOC must be operational and providing service for a fee prior to a BOC's entrance into the interLATA market. Thus, staff agrees with the FCC's interpretation on this point and believes that it is consistent with the intent of the Act.

Competitive Threshold

BST argues that the Act does not require that a particular volume of customers be served. (Varner TR 129) Thus, BST asserts there is no question that the provision of access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service is met. (BR p.10) AT&T recognized that the FCC's analysis in the Ameritech Order focused more on the nature and level of competition rather than the quality of interconnection; however, AT&T maintains that BST is not "providing access and interconnection to its network facilities from the network facilities of such competing providers" in Florida because the nature and level of competition is insufficient. (BR p.9) FCCA's witness Gillan asserts that there is no measurable competition in BST's territory today because BST has not implemented the tools necessary for widespread competition. (TR 1772) Thus, witness Gillan asserts that BST does not satisfy the threshold requirements of Section 271. (TR 1772)

MCI's witness Wood asserts that the Act contemplates a competitive threshold prior to a BOC entering the interLATA market. (EXH 65, p.9) Witness Wood states that while he is not suggesting Congress articulated a specific market share loss in local traffic prior to a BOC entering the interLATA market, he believes that Congress was well aware that competition in the local market must occur before a BOC could enter the interLATA market. (EXH 65, p.10) However, witness Wood did point out that the competitive threshold determination could be a part of the public interest standard which this commission can interpret and make a recommendation to the FCC. (EXH 65) In addition, FCTA's witness Pacey also asserts that without some sort of a threshold for effective competition, the impact on consumers would be substantially compromised. (EXH 85, p.11) Witness Pacey contends that while she cannot specify a threshold level of competition that

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must exist in the local market prior to a BOC entering the interLATA market, she states that you have to have a truly competitive market structure that is fully operational in the marketplace. (EXH 85, p.12)

According to the FCC, the word "competing" within the phrase "unaffiliated competing provider" does not require any specified level of geographic penetration or market share by a competing provider. Furthermore, the FCC concluded that the plain language of Section 271(c)(1)(A) does not mandate any specified level of geographic penetration, and thus does not support imposing a geographic scope requirement. Staff agrees. The FCC concluded that the Senate and House each rejected language that would have imposed a requirement regarding a specified level of geographic penetration or market share by a BOC in Section 271(c)(1)(A). (EXH 1, FCC 97-298, ¶77) However, the FCC did recognize that "there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC, and therefore, not a "competing provider." (EXH 1, FCC 97-298, ¶77)

Staff agrees with the FCC that the plain language of Section 271(c)(1)(A) does not mandate any specified level of geographic penetration or market share. However, staff would point out that the Joint Conference Committee Report specifically stated that it expects the FCC to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance. Thus, staff believes that competing carriers must actually be operational, with carriers accepting requests for service and providing that service for a fee. Staff believes that it could be argued that the provision of access and interconnection to one residential customer and one business customer satisfies the requirement of Section 271(c)(1)(A); however, staff does not believe that is the intent of the Act. Staff believes that a competitive alternative should be operational and offering a competitive service to residential and business subscribers somewhere in the state. In addition, staff believes that the competitor must offer a true "dialtone" alternative within the state, and not merely offer service in one business location that has an incidental, insignificant residential presence.

While the FCC concluded that Section 271(c)(1)(A) does not mandate a specified level of geographic penetration or market share, the FCC stated that this conclusion does not preclude the FCC from considering competitive conditions or geographic penetration as a part of its public interest consideration under Section 271(d)(3)(C). (EXH 1, FCC 97-298, ¶79) Staff agrees with

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the FCC's interpretation on this point. Furthermore, staff would note that while no issue in this proceeding specifically deals with the public interest under Section 271(d)(3)(c), it does not prohibit this Commission from providing comments regarding public interest considerations, including the competitive conditions in Florida, once BST files a 271 application with the FCC.

Conclusion

Based on the evidence presented in this proceeding and the discussion above, several ALECs operating in Florida, including TCG, Sprint, and ICI, are accepting requests for telephone exchange service from business customers for a fee. (EXH 84, p.46; EXH 123, p.2; EXH 80) In addition, these carriers appear to be serving business subscribers either exclusively over their own facilities or predominantly over their own facilities in combination with resale. Staff would note that a large number of confidential filings have been made in this proceeding regarding the number of ALEC subscribers and subscriber lines. However, when taken collectively, there is evidence in this proceeding that confirms that the ALECs in Florida are serving approximately 27,000 business subscriber access lines in BST's territory. (EXH 84, p.46; EXH 123, p.2; EXH 80) Thus, staff believes that BST is providing access and interconnection to its network facilities for the network facilities of such competing providers pursuant to Section 271(c)(1)(A) for business subscribers.

However, staff does not believe that BST is providing access and interconnection to its network facilities for the network facilities of such competing providers pursuant to Section 271(c)(1)(A) for residential subscribers. While BST contends that TCG and MediaOne are providing local exchange service to residential customers, as previously discussed in staff's analysis, staff does not believe that there is sufficient evidence in this record to support such a finding. While TCG provides service to at least one STS provider that, in turn, resells it to residential subscribers, there is no evidence in the record to confirm if one or more residential subscribers are actually being provided service. Thus, staff is unable to confirm if access and interconnection is being provided to competing providers of local exchange service to residential subscribers.

Staff believes that there are also several problems with regard to BST relying on MediaOne to fulfill the requirement of Section 271(c)(1)(A) regarding the provision of access and interconnection to competing providers of local exchange service to residential subscribers. As discussed earlier, based on the evidence in this proceeding, staff is unable to determine whether

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MediaOne's residential offering is a test or whether MediaOne intends to expand its service offering to additional residential subscribers. Staff does not believe that the provision of local exchange service on a test basis is sufficient to satisfy this portion of Section 271(c)(1)(A). Staff believes the competing provider must be accepting requests from subscribers and service must be provided for a fee. In addition, MediaOne's agreement with BST was negotiated pursuant to state law rather than Section 252 of the Act. There is no Commission order approving it pursuant to Section 252, and staff does not believe that this agreement is a binding agreement which BST may rely on in order to satisfy Section 271(c)(1)(A). Hence, staff does not believe that BST's reliance on MediaOne to satisfy Section 271(c)(1)(A) regarding the provision of access and interconnection to competing providers of local exchange service to residential subscribers is sufficient.

In summary, staff believes that BST is providing access and interconnection to competing providers of business service. Staff believes that competing carriers are providing a commercial alternative to business subscribers in Florida. It appears that competing providers are accepting requests from business subscribers and are charging these subscribers a fee. Thus, staff believes that this portion of Section 271(c)(1)(a) regarding the provision of access and interconnection to competing providers of business service is satisfied. However, based on the reasons discussed above, staff does not believe BST is providing access and interconnection to competing providers of residential service.

1(A)(c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?

Section 271(c)(1)(A) requires that any such competing carriers provide local exchange service to business and residential consumers. BST argues that the Act does not require that a particular volume of customers be served. Witness Varner asserts that Section 271(c)(1)(A) does not require that competing carriers provide service to more than one residential and one business customer in order to satisfy the Track A requirement. (TR 129) BST also asserts that the ACT requires only that it provide interconnection and access to one or more facilities-based providers that, taken together, serve at least one residential and one business customer. (Varner TR 361-362; BR p.10) The competing carriers in this proceeding assert that a certain threshold level of competition must exist before a BOC enters the interLATA market.

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As discussed in part b of this issue, staff does not believe that a specified level of geographic penetration or market share by a competing provider is required to satisfy track A. However, staff believes that a competing provider serving one residential customer and one business customer does not satisfy the requirements of Section 271(c)(1)(A). Staff believes that a competing provider must actually be in the market and operational. In addition, carriers must be accepting requests for service and providing that service for a fee. It could be argued that the provision of access and interconnection to one residential customer and one business customer satisfies the requirements of Section 271(c)(1)(A); however, based on our reading of the Act and the Joint Conference Committee Report, staff does not believe that is the intent of the Act. Staff believes that a competitive alternative should be operational and offering a competitive service to residential and business subscribers somewhere in the state. In addition, staff believes that the competitor must offer a true "dialtone" alternative within the state, and not merely offer service in one business location that has an incidental, insignificant residential presence.

Combination of Customer Classes

Section 271 (c)(1)(A) requires that competing providers offer telephone service either exclusively or predominantly over its own facilities in combination with resale. BST asserts that the phrase "exclusively over their own telephone exchange service facilities," means that the competitor is not reselling retail telecommunication services of another carrier to provide local service to its customers. (Varner TR 123) Witness Varner contends that a facilities-based carrier may build 100% of its own network, or the competitor may purchase certain unbundled network elements from BST and combine them with facilities they have built to provide service to the end user. (TR 123) This interpretation is consistent with the FCC's interpretation in the Ameritech order. In that order, the FCC interpreted the phrase "own telephone exchange service facilities" to include unbundled network elements that a competing provider has obtained from a BOC. (EXH 1, FCC 97-298, ¶101)

BST asserts that a combination of facilities-based providers satisfies the requirements of Track A. (Varner TR 126) Witness Varner contends that one competitor with a binding agreement may provide facilities-based service to residential customers and another may provide facilities-based service to business customers. (TR 126) BST asserts that the Act does not state that a single provider to both residential and business customers is required. (TR 126) Staff agrees. ACSI's witness Falvey and FCCA's witness Gillan both testify that BST could qualify for Track A if one

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competitor with an agreement provides facilities-based service to residential customers and another provides facilities-based service to business customers. (EXH 73, pp.23-24; TR 1916) Witness Gillan contends what really matters is that customers be served, both business and residential, on a basis equal to BST. (TR 1916)

In the Ameritech order, the FCC concluded that when a BOC relies on more than one competing provider to satisfy Section 271(c)(1)(A), each such carrier does not need to provide service to both residential and business customers. Thus, Section 271(c)(1)(A) is met if multiple carriers collectively serve residential and business customers. (EXH 1, FCC 97-298, ¶82) However, if a BOC is relying on a single provider, it would have to be competing to serve both business and residential customers. Staff agrees with the FCC's interpretation of the Act and believes that Section 271(c)(1)(A) is met if multiple unaffiliated facilities-based carriers collectively serve residential and business customers.

BST also asserts that the Act does not require a provider to serve both customer classes over their own facilities. (Varner TR 124) Furthermore, BST contends that the Act is satisfied as long as the competitor can reach one class of customers wholly through resale, provided that the competitor's service as a whole is predominantly facilities-based. (TR 124) Witness Varner asserts that this is consistent with Congress's objective of increasing the level of competition in both the local and long distance markets while ensuring that at least one facilities-based competitor is offering service to both residential and business customers. (TR 124) In the Ameritech decision, the FCC did not determine whether it is sufficient under Section 271(c)(1)(A) for a competing provider to provide local service to residential subscribers via resale, as long as it provides facilities-based service to business subscribers. (EXH 1, FCC 97-298, Footnote 190)

Several of the parties in this proceeding assert that being a facilities-based provider for one class of customers and reselling to another class of customers, does not satisfy Section 271(c)(1)(A). For the most part, the parties believe that the Act clearly states that the Act talks about facilities-based competition for residential and business subscribers. (EXH 73, p.26; Gillan TR 1916; EXH 65, p.12) Staff agrees. Staff believes that it is clear that the intent of the Act is that facilities-based competition exist for both residential and business subscribers. In support of staff's belief, the Joint Conference Committee Report states that local exchange service be made available to both residential and business subscribers. Additionally, it states that for a competitor to offer exchange

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access service to business customers only is not sufficient. Furthermore, the Joint Conference Committee report concludes that resale would not qualify because resellers would not have their own facilities in the local exchange over which they would provide service, thus failing the facilities-based test. Thus, staff believes that it is clear that the intent of the Act is that facilities-based competition exist for both residential and business subscribers.

Service to Residential and Business Customers

BST believes there is no question that this portion of the Act is satisfied as to business customers. (BR p.10) BST asserts that there are at least five interconnectors providing service to business customers, which meets this requirement. (Varner TR 128; BR p.10) BST also asserts that there are currently at least two facilities-based providers that are serving residential customers. (Varner TR 292; BR p.11) Based on a response provided by FCTA, BST believes that MediaOne is serving residential customers in two different local markets in Florida. (BR p.11; EXH 87) BST also asserts that TCG is providing facilities-based local service to one provider who is, in turn, providing local service to residential subscribers. (BR p.11) While BST believes that there is sufficient evidence that facilities-based providers have interconnection agreements with BST and are providing service to residential customers, AT&T contends that there is no evidence in the record to support witness Varner's assertion that these carriers are providing service to residential customers. (Varner TR 292; AT&T BR p.11) BST also asserts that it is aware of two cable companies providing business and residential customers service over their own facilities; however, it was unable to provide any estimates of the total facility-based customers being served by these companies. (EXH 5, p.4)

As discussed in part b of this issue, staff believes that TCG currently provides local exchange service to business customers that satisfies this portion of Section 271(c)(1)(a); however, it is questionable whether or not TCG provides local exchange service to residential customers. TCG contends that it does not have tariffed residential service and does not provide residential service in the traditional sense. (EXH 123, p.11) However, witness Kouroupas asserts that TCG sells services to resellers and shared tenant service providers who may, in fact, be providing residential service. (EXH 123, p.11; TR 3503) In fact, witness Kouroupas testified that at least one STS provider is purchasing service from TCG and is, in turn, reselling it to residential subscribers. (TR 3503; EXH 123, p.18)

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Staff believes that the provision of residential service through a downstream reseller may satisfy the requirement of Track A. However, based on the evidence in this proceeding, staff is unable to confirm the number of residential subscribers actually being served by a competing provider, or if these residential subscribers are paying for service. Therefore, while staff agrees that BST is providing access and interconnection to TCG, staff cannot make a determination at this time as to whether or not TCG is a "competing provider" of local service to residential subscribers.

As noted in part b of this issue, FCTA asserts that MediaOne is currently providing residential service over its own facilities to fewer than 35 subscribers in the city of Plantation, Florida. These residential subscribers have not to date been assessed a fee for their local telephone exchange service. (EXH 87, p.1) FCTA contends that MediaOne is also currently providing business service to fewer than 10 subscribers with fewer than 2,000 subscriber lines as of July 1997. (EXH 87, p.2) FCTA asserts that these business subscribers are all assessed a fee for their local telephone exchange service. The total billings for each month May-June 1997 were less than \$90,000 a month for local business telephone exchange service. (EXH 87, p.3)

Staff believes that there are several problems with BST relying on MediaOne to fulfill the requirement of Section 271(c)(1)(A) regarding the provision of service to residential and business subscribers. Based on the evidence in this proceeding, staff is unable to determine whether MediaOne's residential offering is a test or whether MediaOne intends to expand its service offering to additional residential subscribers. While BST asserts it believes that MediaOne's offering involves live customers who are actually getting service, witness Varner testified that he has no personal knowledge whether MediaOne has billing systems in place to charge for local exchange service. (EXH 5, p.120; TR 125) Finally, MediaOne's agreement with BST was negotiated pursuant to state law rather than Section 252 of the Act. Thus, there is no commission order approving it pursuant to Section 252. Therefore, staff does not believe that this agreement is a binding agreement which BST may rely on in order to satisfy Section 271(c)(1)(A).

CONCLUSION

In summary, staff believes that there is record evidence BST is providing access and interconnection to competing providers of business service either exclusively over their own facilities or predominantly over their own facilities in combination with resale.

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Staff believes that competing carriers are providing a commercial alternative for business subscribers in Florida. It appears that competing providers are accepting requests from business subscribers and are charging these subscribers a fee. Thus, staff believes that this portion of Section 271(c)(1)(a) regarding the provision of access and interconnection to competing providers of business service either exclusively over their own facilities or predominantly over their own facilities in combination with resale is satisfied. However, for the reasons discussed above, staff does not believe that the record supports the conclusion that BST is providing access and interconnection to competing providers of residential service either exclusively over their own facilities or predominantly over their own facilities in combination with resale.

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ISSUE 1B: Has BellSouth met the requirements of Section 271(c)(1)(B) of the Telecommunications Act of 1996? (Siriani)

- (a) Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?
- (b) Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?

RECOMMENDATION: No, BellSouth has not met the requirements of Section 271(c)(1)(B).

- a. Yes, an unaffiliated competing provider has requested access and interconnection with BellSouth.
- b. No, a statement of terms and conditions that BellSouth generally offers to provide access and interconnection has not been approved or permitted to take effect under Section 252(f) in Florida.

POSITION OF THE PARTIES

ACSI: No. BellSouth has received requests for access and interconnection and Track B is not available to BellSouth.

AT&T:

(a): Yes. A number of such providers, including AT&T, have timely requested access and interconnection with BellSouth pursuant to Section 271(c)(1)(A). Track B therefore is unavailable to BellSouth in Florida.

(b): No. No such statement has been approved or permitted to take effect under Section 252(f) to date, and the Commission should reject the statement proffered by BellSouth after the close of the hearing in this docket because it does not comply with the requirements of Section 252(f).

BST:

(a): Yes, and agreements have been entered into, as described above in answer to Issue 1. It is unclear, however, whether the requests that have resulted in interconnection agreements that remain unutilized constitute "qualifying requests."

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(b): Not yet. BellSouth's Statement has not yet been approved by this Commission. BellSouth's Statement, however, is fully compliant with Section 252(f) and should be approved.

FCCA: No. BellSouth has received requests for access and interconnection; therefore, it is ineligible to proceed under Track B. The plain language of the Act clearly establishes that the two tracks are mutually exclusive. Further, as a practical matter, if these two tracks are not mutually exclusive an incumbent would have no incentive to open its market to competition.

(a): Yes, see Issue 1(A)(a).

(b): No. No final SGAT was filed in this case until after the close of hearing, much less approved or permitted to take effect. Further, the SGAT does not meet the required standards for approval because its prices are not cost-based and because many are interim in nature.

FCTA:

(a): No. BellSouth has received requests for access and interconnection. Therefore, Track B is not available.

(b): No. BellSouth's SGAT has not been approved or permitted to take effect under Section 252(f).

ICI: No, BellSouth has not met the requirements of Section 271(c)(1)(B) because several competing providers of telephone exchange service to residential and business customers have, at least three months prior to the date on which BellSouth may seek in-region inter LATA authority, requested the access and interconnection described in Section 271(c)(1)(A). Similarly, the Commission has not certified that any of the qualifying providers have delayed the negotiation or implementation process.

(a): Yes, several unaffiliated competing providers of telephone exchange service, including Intermedia, have requested access and interconnection with BellSouth.

(b): No, BellSouth's SGAT has not been approved or permitted to take effect under Section 252(f). Moreover, BellSouth's untimely request that its SGAT be approved in this proceeding must be denied.

MCI: No. As a result of requests for access and interconnection from potential providers of facilities-based business and residential service, BellSouth is ineligible to proceed under Track B at this time.

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(a): Yes, MCI has requested such access and interconnection. Other ALECs have also requested access and interconnection with BellSouth.

(b): No. At the conclusion of the hearings, BellSouth still had not filed a statement of generally available terms and conditions (SGAT) with the Commission, though it had submitted "Draft SGATs." Since the hearings ended, BellSouth has submitted two different "Final SGATs." One was submitted after the deadline imposed by the Commission. The approval of a BellSouth SGAT is not relevant to its ability to seek interLATA authority in this case. Further, none of the SGATs presented by BellSouth are in compliance with the 14 point checklist.

MFS/WorldCom: No. BellSouth Telecommunications has received at least one request for access and interconnection, thus Track B entry is not available.

(a): Yes.

(b): No. BellSouth does not have an SGAT that has been approved or permitted to take effect. The "final" SGAT filed after the close of the record should not be approved because it does not comply with the Act.

Sprint: No. BellSouth has not met the requirements of Section 271(c)(1)(B) since (a) it has received requests for interconnection in the State of Florida. The only exception provided in Section 271(c)(1)(B) would require that this Commission certify that the only provider or providers making such requests for interconnection have (1) failed to negotiate in good faith as required by Section 252, or (2) violated the terms of an agreement approved under Section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement. This exception does not apply in this case. (b) The best BellSouth statement of general terms and conditions should not be approved or allowed to take effect under Section 252(f).

TCG: No. It is undisputed that qualifying providers have requested access or interconnection within the designated time period, and that BellSouth has entered into a binding interconnection agreement with most, if not all, of the parties to this proceeding as well as other ALECs. Therefore, BellSouth is not eligible to proceed under Section 271(c)(1)(B).

(a): Yes. TCG and other unaffiliated competing providers have requested access and interconnection from BellSouth.

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(b): No. BellSouth submitted a Statement of Generally Available Terms ("SGAT") to the Commission for approval subsequent to the hearing in this proceeding. The SGAT has neither been approved nor permitted to take effect. Moreover, the SGAT that BellSouth submitted is fatally flawed and the Commission cannot approve the SGAT nor permit the SGAT to take effect. Furthermore, the SGAT is irrelevant to this proceeding because ALECs have entered into binding interconnection agreements with BellSouth.

STAFF ANALYSIS:

INTERPRETATION OF SECTION 271 REQUIREMENTS

SECTION 271 REQUIREMENTS

Section 271(c)(1)(B) allows a BOC to seek entry under Track B if "no such provider" has requested the access and interconnection described in Track A, and the BOC's statement of generally available terms and conditions has been approved or permitted to take effect by the applicable state regulatory commission. Section 271(c)(1)(B) contains only two exceptions to these "provisions": 1) all the providers that requested such access and interconnection negotiated in bad faith; or 2) all providers have failed to abide by an implementation schedule contained in their interconnection agreements.

FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

In response to SBC Communications Inc.'s (SBC) 271 application for authorization to provide in-region, interLATA services in the State of Oklahoma, the FCC issued Order FCC 97-228 on June 26, 1997. (EXH 1) The FCC denied SBC's 271 application and concluded that SBC had not satisfied the requirements of Section 271(c)(1)(A) and was not eligible to proceed pursuant to Section 271(c)(1)(B). According to the FCC, Track B is not available to BOCs that have received a "qualifying request" for interconnection and access from potential facilities-based competitors. (EXH 1, FCC 97-228, ¶27) A "qualifying request" is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of Section 271(c)(1)(A). (EXH 1, FCC 97-228, ¶27) Furthermore, such a request need not be made by an operational competing provider; rather, the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers. According to the FCC, the burden of proof with respect to factual issues remains at all times

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with the BOC, even if no party opposes the BOC's application. (EXH 1, FCC 97-228, ¶43)

The FCC also concluded that if facilities-based competition does not emerge after a request for access and interconnection because the potential competitor fails either to bargain in good faith or to implement its interconnection agreement according to a negotiated or arbitrated schedule, Track B would become available to the BOC. (EXH 1, FCC 97-228, ¶37)

SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE

Staff generally agrees with the FCC's interpretation of the requirements of Section 271(c)(1)(B). (EXH 1, FCC 97-121) In order for BellSouth to meet the requirements of Section 271(c)(1)(B), it must show evidence that "no such provider" has requested the access and interconnection described in Section 271(c)(1)(A) before the date which is 3 months before the date the company makes its application under Section 271(d)(1). BellSouth must also show that a SGAT that the company generally offers to provide access and interconnection has been approved or permitted to take effect by the state commission under Section 252(f). Specifically, Section 252(f)(2) requires that the SGAT meet two criteria:

- it must comply with Section 252(d), which requires nondiscriminatory cost based prices, and regulations for interconnection, network elements, transport and termination of traffic, and wholesale rates; and
- must further comply with Section 251, which defines duties of interconnection, unbundled access, and resale.

STAFF DISCUSSION

All of the competing parties in this proceeding agree that BST is not eligible to seek interLATA authority in Florida under Track B. (TCG BR p.2; FCCA BR p.34; MCI BR p.13; AT&T BR p.12; ICI BR p.16; MFS BR p.8; FCTA BR p.13; Sprint BR p.3; ACSI BR p.9) The competing parties agree that Track A is the only avenue available to BST since potential facilities-based competitors have requested access and interconnection from BST in Florida. (FCCA BR p.36; MCI BR p.10; AT&T BR p.12; ICI BR p.17; MFS BR p.8) However, BST contends that if it is not eligible to file a 271 application with the FCC pursuant to Track A, it should remain eligible for Track B. Track B enables a BOC to apply for entrance into the long distance market based on an approved SGAT. BST asserts that this commission's role is to consult with the FCC once BST has filed a 271 application to verify the existence of either a state approved

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interconnection agreement(s) or a SGAT that satisfies the competitive checklist. (BR p.6)

BST argues that its proposed SGAT provides each of the functions, capabilities, and services that the Act requires in order for all ALECs to enter the local exchange market. BST contends that the features, functions and services in its proposed SGAT are identical to the items in the 14 point checklist contained in Section 271 of the Act. Thus, BST believes that if the SGAT satisfies Section 251 and 252(d), then it also meets the competitive checklist in Section 271(c)(2)(B).

1(B)(a) Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?

As stated in Section 271(c)(1)(B), a BOC can only satisfy these requirements of Track B if no competing provider had requested the access and interconnection described in Track A by December 8, 1996, which is ten months after the Act took effect. BellSouth admits, and the parties agree, that numerous carriers have requested access and interconnection with BST within ten months after the effective date of the Act. (Varner TR 274, 276, 280) BST contends that there are carriers in Florida who fulfill the Track A requirements; thus, it is not eligible to seek interLATA authority in Florida under Section 271(c)(1)(B). (TR 278; EXH 16, p.6)

Staff agrees that the record in this proceeding demonstrates that BST has received "qualifying requests" for access and interconnection as defined by the FCC. According to the FCC, if a BOC has received a "qualifying request," it may not proceed under Track B. (EXH 1, FCC 97-228, ¶27) The FCC defined "qualifying request" as a "request" for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of Section 271(c)(1)(A). (EXH 1, FCC 97-228, ¶27) Furthermore, such a request does not have to be made by an operational competing provider; the FCC concluded "the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers." (EXH 1, FCC 97-228, ¶27)

BST contends that if it is not eligible to file a 271 application with the FCC pursuant to Track A, it should remain eligible for Track B. BST contends that Track A requires that competitors' "network facilities" be sufficient to make the competitor "exclusively" or "predominantly" facilities-based. BST believes that this provision of Track A is attributable to the

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belief of Congress that cable companies would emerge quickly as facilities-based local market competitors. (BR p.13) Unlike Track B, Track A requires no waiting period. BST argues that it is clear from the Act that Congress intended that Track A would be available if facilities-based providers are already in the market. (BR p.14) Thus, BST contends that in order to determine if it is eligible for Track B, a factual record is required to determine if any of the companies it has entered into interconnection agreements with were providing local service over their own facilities at the time of their request. Furthermore, BST does not believe that there is evidence in the record to suggest that this is the case; thus, if BST has not met Track A, BST believes that it is eligible for Track B. (BR p.14)

While BST believes that the Act is clear on this issue, BST points out that the FCC interpreted this language to mean that a facilities-based provider is not necessarily required in order to make a BOC ineligible for Track B. (BR p.14; FCC 97-228, ¶50-51) Witness Varner contends that the FCC's decision establishes a "Black Hole" between the Track A and Track B provisions of the Act. (TR 109) BST asserts that it does not believe that Congress ever intended for the FCC to create a situation where competitors could effectively decide when customers could enjoy the benefits of competition in the long distance market through in-region BOC entry. (Varner TR 109)

While BST does not agree with the FCC's conclusion in the SBC case that a request by a new entrant that has the "potential" to be a facilities-based provider is enough to make Track B unavailable, BST asserts that the FCC also made it clear that not every request for interconnection is a "qualifying request." (Varner TR 109; BR p.14) In fact, the FCC realized the potential for a BOC to be foreclosed from Track B while at the same time not meeting the requirements of Track A. (EXH 1, FCC 97-228, ¶56) Thus, the FCC concluded that if a BOC is foreclosed from Track B in a particular state, it would reevaluate the case if relevant facts demonstrate that no potential competitors were taking reasonable steps toward implementing a request in a way that would satisfy Track A. (EXH 1, FCC 97-228, ¶58)

BST asserts that two of the largest ALECs in Florida, AT&T and MCI, were unable to provide any forthcoming information regarding their plans to enter the market and in what manner. (BST BR pp.16-17) Specifically, BST relies on the testimony of FCCA's witness Gillan who asserted that he had no information as to the specifics of the market entry plan of any of the carriers whom he represented, and MCI's witness Gulino, who was unable to provide information as to when MCI plans to serve residential customers.